IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

JUDGMENT.

Municipal Board, Tara Nagar vs. Jagdish Prasad

S.B. Civil Second Appeal No.156/1992 against the judgment and decree dated 19.9.1992 passed by the learned Addl. District Judge, Churu in Appeal No.59/1992.

Date of Judgment: January 04 , 2007.

PRESENT
HON'BLE MR. PRAKASH TATIA,J.

Ms. N.M.Lodha for the appellant.
Mr. R.R. Nagori,for the respondent.
Mr. M.S. Singhvi for the applicants.

REPORTABLE

BY THE COURT:

This appeal is directed against the judgment and decree of the trial court dated 19.9.1992 by which the first appellate court allowed the appeal of the plaintiff-respondent Jagdish Prasad and passed the decree for injunction against the appellant-defendant with respect to the land measuring 413 ft. x 145 ft. situated near the Post Office of Tara Nagar.

Brief facts of the case are that the plaintiff filed the suit for permanent injunction against the defendant-appellant with the plea that the land in question originally belonging to the plaintiff's ancestors Sandu, Shivnand and Bali, for which a *Patta* was issued by the erstwhile

Bikaner State in the Samvat Year 1936 for a consideration of Rs.20/-. The *Patta* is dated *Chaitra Vadi-11,*Samvat Year 1936. The plaintiff gave the neighbourhood of the land as it was in the Samvat Year 1936 and thereafter in para 6 gave the neighbourhood which were the neighbourhood of the land in question at the time of the filing of the suit because of the reason that the suit was filed by the plaintiff in the year 1987. The plaintiff filed the suit because of the reason that the defendant-appellant threatened the plaintiff-respondent and wanted to dispossess the plaintiff. The plaintiff also rely upon certain documents of the year 1965 and 1974, the maps prepared by the Municipal Board, Tara Nagar itself whereby it is proved that land in dispute was not of the Municipal Board, Tara Nagar.

The defendant-appellant submitted written statement and stated that there is no land of the *Patta* is there as alleged by the plaintiff. The appellant-defendant submitted that in fact there is a land of Khasra No.656 situated on the road of Tara Nagar to Rajnagar and that land is of Municipal Board,Tara Nagar. In the north side of Khasra No.656 there is another land which is of Khasra No.641 and that is recorded in the name of one Chhabil Chand. Sor far as the old name of the way is concerned, the defendant denied for want of knowledge only. It is submitted that the land in question is of Municipal Board and, therefore, the plaintiff has no right over the land in question.

The trial court framed the issues which are (1) whether the plaintiff is owner in possession of the land mentioned in para 6 of the plaint, (2) whether the defendant-appellant is estopped from challenging the title of the plaintiff in view of the documents of the defendant-appellant itself and (3) whether the defendant gave threat to the plaintiff for interference in the possession of the plaintiff's land and on the basis of plea taken by the defendant, an issue was framed whether the plaintiff has no locus standi to file the suit.

The trial court after appreciation of evidence, decided issue no.1 in favour of the plaintiff and held that the land is covered under the Patta Ex.1 of Samvat Year 1936 . However, in the same issue, the trial court held that the plaintiff has not proved the pedigree and thereby he did not prove the relationship with the persons named in the Patta and, therefore, it cannot be said that the plaintiff became the owner of the property by the Patta of the Samvat Year 1936 . The trial court while deciding issue no.2, held that the plea of estoppel cannot be enforced against the defendant because of the documents Ex.2A, 3A and 4A, whereby the plaintiff sought drawing of inference of admission of the defendant about the title of the plaintiff. While deciding issue no.3, the trial court held that since the plaintiff is not owner of the property, therefore, he is not entitled to decree for injunction. Thereafter, the trial court, after holding that the land in question is part of the Patta

Ex.1A, dismissed the suit of the plaintiff despite plaintiff's possession, by the judgment and decree dated 14.2.1991.The plaintiff preferred appeal which was allowed by the learned Addl. District Judge, Churu vide judgment and decree dated 22.9.1992. The first appellate court held that the trial court held that the land in question is covered by the Patta Ex.1 and the trial court committed error in holding that the plaintiff failed to prove himself to be the descendant of the persons named in the Patta. The first appellate court also held that the appellant-defendant itself admitted in its own documents that the land in question is private property and, therefore, cannot claim the said land to be their own. In view of the above finding, the first appellate court held that the plaintiff is owner of the property in dispute by virtue of Patta and being descendant of the persons named in the Patta and also is in possession and, therefore, the respondent cannot interfere in the peaceful possession of the plaintiff over the property in dispute.

Following substantial questions of law were framed by this Court while admitting this appeal on 20.11.1996:-

> "(1) Whether the plaintiff-respondent miserably failed to establish himself to be descendant of Sandu and Shivanand, if so its effect?
>
> (2) Whether in absence of any link evidence to the effect that the land in question was part and parcel of Patta-sud land of Sandu and Shivnand yet the suit can be decreed.

The learned counsel for the plaintiff-respondent pointed out that

on 20.11.1996, an order was passed by this Court directing the plaintiff-respondent to preserve the suit property as it exists till further order. On 13.10.1997, on appellant's application, the matter was again taken up. The appellant submitted in the application that during pendency of this appeal, taking advantage of the fact that the findings of the lower court have gone against the Municipal board the property which is the subject matter of the suit is being encroached by several persons who are not party to this litigation. The appellant suggested that the Municipal Board be allowed to take action against all such encroachers treating the property to be its own property pending the decision of this appeal. It appears from the order dated 13.10.1997 that the prayer was not opposed by the plaintiff-respondent subject to his own right to property because according to the respondent-plaintiff also if the property is encroached it would not be for the benefit of any of the parties. Therefore, this court directed that the property which is subject matter of this appeal shall be treated to be the property of the Municipal Board for the purpose of removal of encroachments during the pendency of this appeal. Yet another order was passed by this Court on 18.12.1997. This order dated 18.12.1997 was passed by this Court because of the reason that 14 applicants moved application complaining that on the authority of the interim order passed by this Court dated 13.10.1997, the Municipal Board is threatening to remove the applicants

from the land in dispute. This Court modified the order dated 13.10.1997 and ordered that the 14 applicants who have moved this Court, shall not be evicted from the property by the Municipal Board treating them as encrochers if they furnish an undertaking within a month from the date of order to hand over peaceful and vacant possession of the portion in the suit property they are occupying in case the property is held to be the Municipal property ultimately in this appeal. It is also made clear by this Court that action for any other violation of Municipal Laws which can also be taken against the persons occupying land other than the Municipal land may be taken as per law by the Municipal Board against these 14 persons. This Court also directed to maintain the status quo with respect to possession of the property by various persons.

The learned counsel for the appellant vehemently submitted that the plaintiff miserably failed to prove himself to be the descendant of Sandu and Shivnand and in absence of any link evidence to the effect that the land in question was part and parcel of Patta-sud land of Sandu and Shivnand, the suit could not have been decreed. This argument has been raised in view of the substantial questions framed by this Court on 20.11.1996. However, the learned counsel for the appellant, apart from above substantial questions of law, vehemently submitted that the land in question is not covered by the Patta Ex.1. For this, the learned

counsel for the appellant submitted that the Patta was issued of some village Reni and there is no mention of Tara Nagar in the Patta. Therefore, this Patta is not the Patta of the land of Tara Nagar which has been claimed by the plaintiff. It is also submitted that the measurements have not been given in the Patta Ex.1 and, therefore, the plaintiff was not entitled to any decree for injunction against appellant-defendant. The learned counsel for the appellant also vehemently submitted that it was the duty of the plaintiff to explain all the facts and circumstances by pleading material facts and the plaintiff cannot rely upon weakness of the defendant. The learned counsel for the appellant supported the judgments of the first appellant court. Details arguments of the learned counsel for the respondent are not necessary because of the reason that this Court is of the view that there is no merit in the appeal.

First of all, it will be worthwhile to mention here that two substantial questions of law were framed. The first is whether the plaintiff-respondent miserably failed to establish himself to be descendant of Sandu and Shivanand, if so its effect? So has been held by the trial court. But it appears from the written statement filed by the defendant-appellant that that was never the plea of the defendant-appellant before the trial court in the pleading. No issue was framed, nor the plaintiff was cross-examined on this question. No suggestion was

put to the plaintiff that the plaintiff is not descendant of Sandu and Shivnand. The plaintiff in his statement clearly stated that he is descendant of Sandhu and Shivnand. Not only this before that, he pleaded the fact in the plaint and stated that he is descendant of Sandu,Shivnand and Bali and in his statement on oath he clearly disclosed his pedigree. In view of the above, in fact the question whether the plaintiff-respondent was descendant of Sandu and Shivnand should not have been allowed to be raised by the trial court abruptly in the argument of the defendant. Apart from it, there is no rebuttal of the evidence of the plaintiff about his being descendant of Sandu and Shivnand.

The trial court held that the land is covered by the Patta Ex.1 of the Samvat Year 1936. It is not in dispute that the persons named in the Patta were alive and it is the case of the plaintiff that Sandhu and Shivnand died issue-less and he is male linial descendant of brother of those persons. As per the order of succession given under Section 8 of the Hindu Succession Act, there are legal heirs not only as given in clause (a) of Class I, clause (b) of Class II or Entry I to IX ;but the agnates and cognates are also successors as given in Schedule-III and IV under Section 8 of the Hindu Succession Act. Therefore, firstly the trial court should not have allowed the objection of the defendant-appellant about the plaintiff being successor of Sandu and Shivnand and secondly in view

of the schedule annexed to the Hindu Succession Act, the plaintiff-respondent proved himself to be the descendant of Sandu and Shivnand. Therefore, both the substantial questions of law are decided against the appellant and the finding recorded by the first appellate court is upheld.

So far as objection of the learned counsel for the appellant about the identity of the property is concerned, is required to be rejected summarily because of the reason that the said objection though raised in the written statement but for this the plaintiff has not been cross examined. Not only this, from the defendant-appellant's own documents relied upon by the trial court and the first appellate court, it is clear that the land at particular location has been admitted by the Municipal Board itself to be private land and not of its own land. The property can be identified by description given in the documents even if some description is missing. If the property can be identified from the description given in the document then the document cannot be declared to be void and an ambiguous document. In this case the Patta Ex.1 contains neighbourhood of the property in dispute and those neighbourhood tally with the existing neighbourhood of the property. This can be presumed that by passing of time, the neighbourhood may change. In this case the Patta was issued in the Samvat Year 1936. The suit was filed in the year 1987. In view of the above, the argument

raised by the appellant challenging the identity and location of the property is rejected.

In view of the above, there is no merit in this appeal and the appeal of the appellant is dismissed.

The interim orders passed by this Court are vacated because of the reason that the scope of suit was limited and that was for grant of injunction only and the applicants were not party in the suit, therefore, their right, title or claim cannot be decided in the second appeal. The effect of the order, that is undertaking if the applicants have furnished in pursuance of the order of this Court, the applicants will be bound by the consequence of that.

(**PRAKASH TATIA),J.**

mlt.